

PROCEEDINGS

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK PART 62

3 THE PEOPLE OF THE CITY OF NEW YORK Indict. No.
4 731/2009

5 -VS-

6
7 SEAN BEST, DEFENDANT Plea

8 January 12, 2010
9 100 Centre Street
New York County

10 B E F O R E:

11
12 HONORABLE RENEE A. WHITE
13 JUSTICE OF THE SUPREME COURT

14 A P P E A R A N C E S:

15 FOR THE PEOPLE
16 Robert Morgenthau, Esq.
17 District Attorney
18 One Hogan Place
19 New York, New York
20 By: TANDY GRAY, ESQ.
21 Assistant District Attorney

22
23 FOR THE DEFENDANT
24 New York County Defenders
25 New York, N.Y.
By: WENDELL CRUZ, ESQ.

FILED

JAN 13 2010

SUP COURT, APP. DIV
FIRST DEPT.

AMALIA HUDSON
OFFICIAL COURT REPORTER

PROCEEDINGS

1 THE CLERK: Sean Best 731 of 2009.

2 MS. GRAY: Tandy Gray, G-R-A-Y for the
3 People.

4 THE COURT: Good afternoon.

5 MR. CRUZ: New York County Defender Services
6 by Wendell Cruz. Your Honor, I am sorry I was speaking
7 with my client and a supervisor of mine in hopes of
8 trying to see if there was going to be a disposition,
9 and my client was indicating he would like a few more
10 minutes because of an issue he was raising with us.

11 I know the People are ready and the reason
12 why we're having further discusses --

13 THE CLERK: I will give you another
14 opportunity to talk to him. Second call.

15 (Case later recalled)

16 THE CLERK: Recalling calendar seven, Sean
17 Best 731/2009.

18 MR. CRUZ: I thank the Court and court staff
19 for allowing me to have the additional time with
20 Mr. Best. There is just one issue I did not inquire of
21 the Court.

22 I made it very clear to Mr. Best that I have
23 explained to Your Honor that in my opinion Mr. Best is
24 entitled or perhaps should receive consideration for
25 minimum sentence of five years, and I advised him Your

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1 Honor last indicated and made it very clear that Your
2 Honor will not consider five years.

3 I also explained to Your Honor that Mr. Best
4 does not have any violent felony convictions or any
5 incidents of violence. The People did raise one issue
6 which I believe, according to Mr. Best, happened when
7 he was 16 years of age, but I can't verify that.

8 Lastly, I also informed Mr. Best that I have
9 informed Your Honor and the People of the issue
10 regarding any possible defense regarding mental disease
11 and defect which I was only -- which was only brought
12 to my attention today and I explained to him that if
13 that were a defense that he wished to be explored, I
14 would have to make an application for adjournment which
15 I believe the Court has more than indicated will not be
16 granted.

17 The last thing is my client is asking the
18 Court most respectfully, if Your Honor is not inclined
19 to do five years, whether Your Honor would at least
20 drop it down to seven years, and I would only make the
21 same arguments I made earlier for Your Honor's
22 consideration and if Your Honor were to consider a
23 seven-year sentence, the same request would be that if
24 Your Honor would consider it running nunc pro tunc to
25 the current sentence he is currently serving, I believe

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1 two to four on that. That is the last request my
2 client is making at this time.

3 THE COURT: I considered this case. I
4 considered your client's record in New York State and
5 in Maryland. He has at least three felony convictions
6 in New York State. He has a number of convictions in
7 Maryland.

8 In this case the victim was allegedly hit on
9 the head with a bottle, knocked him to the ground and
10 repeatedly punched and kicked as he lay on the ground.
11 Very violent crime.

12 The court is offering him eight years. The
13 People are now ready for trial they want -- they're
14 offer is up to 10 years. I will stick with the eight
15 years if he takes it now. If he doesn't take it now,
16 he is going to go forward with the trial. I will make
17 it nunc pro tunc to March 31, 2009.

18 MR. BEST: Can I speak, Judge White?

19 THE COURT: You can speak, but I will not
20 change my mind. I reviewed it. I had your case since
21 March, so I had your case for 10 months. So it's not
22 like I am just thinking about this right now. I have
23 been thinking about this case for 10 months. Okay.

24 So that is the offer. So either take it; if
25 you don't we'll, get the case to trial.

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1 MR. CRUZ: Your Honor, after an extremely
2 lengthy conversation with my client, and just so the
3 record is clear, this conversation also did include a
4 supervisor from my office.

5 Mr. Best is indicating to me he is prepared
6 at this time to withdraw his previously entered plea of
7 not guilty and is prepared to plead to the top count of
8 the indictment of attempted assault in the first degree
9 with the understanding that the Court will impose a
10 sentence of eight years State prison. Sorry. The post
11 release supervision escapes me.

12 THE COURT: Five years.

13 MR. CRUZ: Five years post-release
14 supervision. Mr. Best does stand ready for allocution
15 at this time.

16 THE COURT: Okay. Mr. Best, your attorney
17 advises me you wish to withdraw your prior plea of not
18 guilty and you wish to plead guilty to attempted
19 assault in the first degree, count one of this
20 indictment to cover all of the charges in this
21 indictment, is that correct?

22 MR. BEST: Yes, ma'am.

23 THE COURT: Is it true that on February 15,
24 2009 at about 4:13 a.m. at 197 Madison Street in
25 Manhattan you stuck a man named *KAEU STKPWER Lugo in

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1 the head with a bottle knocking him to the ground and
2 then you repeatedly punched and kicked him as he lay on
3 the ground. Is that correct?

4 MR. BEST: Yes, ma'am.

5 THE COURT: Okay. And thereby -- can I see
6 the indictment, Counsel. I just want to make sure
7 which subdivision of assault you have in that
8 indictment.

9 (Hanging)

10 THE COURT: Is it true then that with the
11 intent to cause serious physician injury to Mr. Lugo
12 you did cause the -- attempted to cause that injury by
13 means of a danger instrument which was a bottle, is
14 that correct?

15 MR. BEST: Yes, ma'am.

16 THE COURT: You understand when you plead
17 guilty you are giving up your right to have a trial
18 before a jury of 12?

19 MR. BEST: Yes, ma'am.

20 THE COURT: If you went to trial you would
21 have the right to confront and cross examination the
22 witnesses against you. Since you're admitting your
23 guilt, you give up these rights. Do you understand
24 that?

25 MR. BEST: Yes, ma'am.

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1 THE COURT: Also at a trial you would have
2 the right to remain silent as well as to have the
3 opportunity to present evidence in your own behalf, and
4 since you're pleading guilty, your giving up these
5 rights. Do you understand that?

6 MR. BINDER: Yes, ma'am.

7 THE COURT: The promise as we said over and
8 over again is eight years in State prison and five
9 years of post-release supervision. You understand
10 that?

11 MR. BEST: Yes, ma'am.

12 THE COURT: Are you pleading guilty
13 voluntarily?

14 MR. BEST: Yes, ma'am.

15 THE COURT: Okay. Satisfactory to the
16 People?

17 MS. GRAY: Yes.

18 THE COURT: Okay. Enter the plea.

19 MS. GRAY: Sean Best, you now withdraw your
20 previously entered plea of not guilty and enter a plea
21 guilty to the crime of attempt to commit the crime of
22 assault first degree to satisfy indictment 731/2009?

23 MR. BEST: Yes, ma'am.

24 THE COURT: Have you reviewed the felony
25 statement with your client, counsel?

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1 MR. CRUZ: Yes. Sorry.

2 THE COURT: Can the People provide two copies
3 of the felony statement one to the Court one to
4 counsel.

5 (Handing)

6 MR. CRUZ: I have a copy of the predicate
7 felony conviction, reviewed it with my client, and I
8 believe he is ready to be arraigned on this.

9 THE COURT: You way arraign him on that.

10 THE CLERK: Sean Best, a statement has been
11 filed by the District Attorney's office alleging you
12 have been previously convicted of a felony. The
13 statement sets forth the date and place you were
14 charged and convicted. Have you been given a copy of
15 the statement?

16 MR. BEST: Yes, ma'am.

17 THE COURT: The statement reads as follows:
18 On August 22, 2001 in the Supreme Court of New York
19 County in the State of New York, the defendant was
20 convicted of the felony of attempt criminal sale of
21 controlled substance in the third degree in violation
22 of Section 110/220.39 Sub. (1).

23 You may dispute any charge made in the
24 statement, but you must specify the particular charge.
25 You may also challenge the prior conviction on the

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1 ground it was obtained in violation of your
2 constitutional rights. Do you wish to challenge any
3 charge made in the statement?

4 MR. BEST: No, ma'am.

5 THE COURT: Do you wish to challenge the
6 constitutionality of your prior conviction?

7 MR. BEST: No, ma'am.

8 THE COURT: The defendant is adjudicated a
9 predicate felon. He is remanded for sentence.

10 Mr. Cruz, January 26, February 2nd? What
11 date would you like?

12 MR. CRUZ: I left my calendar. I believe
13 either I will make myself available.

14 THE COURT: January 26th. That is two week.

15 MR. CRUZ: One last thing. I don't know if
16 the Court is able to enter an order that would to allow
17 Mr. Best to remain because he may be sent back to a
18 State facility.

19 THE COURT: I'm making it order not
20 satisfied. January 26.

21 MR. BEST: That is not going to work. They
22 sent me back after the last time all the way back to
23 Clinton.

24 THE CLERK: The last time it was over a month
25 adjournment.

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THE COURT: Remand. Take charge, Officer.

MR. CRUZ: January 26th?

THE COURT: January 26th. That will be nunc
pro tunc to March 31, 2009.

* * * * *

THE ABOVE IS CERTIFIED TO BE A
TRUE AND ACCURATE TRANSCRIPT OF
THE TESTIMONY AS TAKEN BY ME.

A handwritten signature in cursive script, appearing to read "Amalia Hudson", is written over the printed name.

AMALIA HUDSON
OFFICIAL COURT REPORTER

1 SUPREME COURT OF THE STATE OF NEW YORK

2 COUNTY OF NEW YORK PART 62

3 THE PEOPLE OF THE CITY OF NEW YORK

Indict. No.
731/2009

4

5 -VS-

6

7 SEAN BEST, DEFENDANT

Sentence

8

January 26, 2010
100 Centre Street
New York County

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10 B E F O R E:

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HONORABLE BONNIE WITTNER
JUSTICE OF THE SUPREME COURT

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14 A P P E A R A N C E S:

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FOR THE PEOPLE
Robert Morgenthau, Esq.
District Attorney
One Hogan Place
New York, New York
By:
Assistant District Attorney

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FOR THE DEFENDANT
New York County Defender Svs.
New York, N.Y.
By: WENDELL CRUZ, ESQ.

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AMALIA HUDSON
OFFICIAL COURT REPORTER

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1 THE CLERK: Calendar 53 Sean Best, indictment
2 731 of 2009.

3 MR. CRUZ: New York County Defender Service
4 by Wendell Cruz. Good afternoon.

5 THE COURT: Good afternoon. Do you have a
6 copy of the presentence report?

7 MR. CRUZ: I do.

8 THE COURT: Okay. Arraigned the defendant for
9 sentence once he gets to the seat.

10 THE CLERK: Sean Best, you are being
11 arraigned for sentencing following your conviction
12 after plea to the crime of attempted assault in the
13 first degree.

14 Prior to sentencing, the Court will allow
15 you, your attorney and the District Attorney an
16 opportunity to address the Court with any matter
17 relevant to sentencing. People?

18 PROSECUTION: The People rely on the promised
19 sentence of eight years jail with five years
20 post-release supervision.

21 MR. CRUZ: Your Honor, most respectfully Mr.
22 Best is asking that I make an application on his behalf
23 to have this matter adjourned for two reasons.

24 Number one is although the probation report
25 indicates that Mr. Best failed -- Sorry -- refused to

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1 be interview by the department of probation, he
2 indicates that he was actually not notified. He was
3 not notified there was an actual probation interview
4 scheduled for him, otherwise he would have, in fact,
5 appeared.

6 Secondly, I have been given the name --
7 Sorry -- the business card of an attorney that I was
8 told to give to the Court. This an attorney that I've
9 been told had been retained by Mr. Best.

10 This attorney apparently is currently on
11 trial in another matter and intends to, or would like
12 to file a notice of appearance for the purposes of what
13 I understand to make a formal application to have
14 Mr. Best's plea vacated.

15 Based on that information, he is asking that
16 I make that representation and application to the
17 Court.

18 THE COURT: There has been no filing of
19 notice of appearance by any attorney. Your the only
20 attorney whose notice of appearance has been filed, so.

21 I cannot entertain that application, and,
22 Counsel, I see no reason to adjourn the sentence.

23 Is there anything you would like to say
24 before I do impose the promised sentence?

25 MR. CRUZ: Your Honor, the last thing I want

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1 to point out is that I did go over with Mr. Best the
2 only thing I can indicate is that the attorney
3 Mr. Giordano, is what the card has, Germana Giordano is
4 currently on trial. I don't know whether that my have
5 prevented the attorney from filling a notice.

6 THE COURT: You don't know where he is. He's
7 never filed on it. We don't know where he may be on
8 trial. It's basically he has a trial going on
9 somewhere.

10 The Court is not in communication with his
11 attorney. He has not been in communication with us.
12 There is no basis for me to adjourn the case, so other
13 than that, you requesting the promised sentence be
14 imposed?

15 MR. CRUZ: Yes, if the Court is denying the
16 application that Mr. Best asked me to make, we would,
17 obviously, rely on the promised sentence.

18 THE COURT: Anything else you would like to
19 say about the sentence, Mr. Best?

20 MR. BEST: I would like to say that my plea
21 of guilty was not voluntary. I took it because I was
22 under duress. I was under medication, and I didn't
23 fully understand what was going on until I came back.
24 I don't want to take this plea. I want to go to trial.

25 THE COURT: Okay. Sir, you have -- you were

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1 arrested back in February 2009 approximately one year
2 ago your case was in a trial ready status, and it was
3 adjourned for trial on several occasions.

4 You and Mr. Cruz were fully involved in your
5 defense in this case. When it came down to the actual
6 trial on January 12, you decided to accept the offer of
7 eight years, fully admitted your guilt, and you were
8 adjudicated a predicate felon.

9 The Court finds no basis to withdraw that
10 plea of guilty at this time, and in accordance with the
11 promise you are sentenced to eight years in State
12 prison and five years post-release supervision.

13 You were promised this case will be sentenced
14 nunc pro tunc to March 31, 2009, and I am so sentencing
15 you nunc pro tunc to March 31, 2009.

16 All the surcharges are imposed. You have a
17 right to appeal and Mr. Cruz make sure he gets a copy
18 of his appellate rights.

19 MR. CRUZ: Yes, Your Honor I am submitting a
20 copy of notice of right to appeal, and for the same
21 reason, I would ask the Court to preserve the record to
22 note our objection to Mr. Best's request for the
23 adjournment.


24 THE COURT: Well, the record has been made.
25 The record has been made. Okay. Take charge officers.

PROCEEDINGS

MR. CRUZ: Thank you.

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THE ABOVE IS CERTIFIED TO BE A
TRUE AND ACCURATE TRANSCRIPT OF
THE TESTIMONY AS TAKEN BY ME.



AMALIA HUDSON
OFFICIAL COURT REPORTER

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